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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,862	11/24/2003	Timothy J. Taylor	29475/39204	5172

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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/720,862

Applicant(s)

TAYLOR ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-6 and 9-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

Claims 1-6 and 9-24 are pending.

Claim Rejections - 35 USC § 112

1. Claims 8 and 16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention are withdrawn in view of applicant's amendment.

Claim Rejections - 35 USC § 102/35 USC § 103

2. Claims 1-24 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Beerse et al (6,294,186) is withdrawn in view of applicant's amendment.

Response to Arguments

3. Applicant's arguments with respect to claims 1-6 and 9-24 have been considered but are moot in view of the new ground(s) of rejection.

4. Claims 1-6 and 9-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wei et al (2002/0098159).

Wei et al disclose an antimicrobial composition comprising a proton donating agent; a surfactant; and wherein the composition has an antibacterial antiviral residual effectiveness index of greater than 1 (col. 2, 0013-0019). Wei et al specifically teach that said compositions are effective against Rhinovirus infections, Staphylococcus aureus; and E. Coli (0008). With respect to compositions of Wei et al, said reference teaches an organic acid in an amount greater than 0.01 and comprises benzoic acid (0033 and 0041); sodium hydroxide to obtain a pH from 2 to 6 (0035-0040); a pKa of

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less than 6.0 (0035); and a surfactant in an amount from 0.05% (0045). Wei et al further teach that said compositions comprise 3 to 98.899% by weight of an aqueous components such as ethanol, isopropanol, propylene glycol; or polyethylene glycol (0091-0093). Note, see examples 2-3. With respect to the method claims, Wei et al teach the use of cleansing human skin by applying said composition for 90 seconds and rinsing to kill bacteria or viruses with a log Reduction of greater than 2 (0395).

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, the examples do not exemplify applicant's specific benzoic acid, however, it would have been obvious to one of ordinary skill in the art to substitute the pyrrolidone carboxylic acid for the benzoic acid because Wei et al teach the equivalence of benzoic acid and pyrrolidone carboxylic acid, as donating agents and with sufficient specificity, that the skilled artisan would have been motivated to include benzoic acid in the skin cleansing formulation because only equivalent results would have been obtained in view of the teachings disclosed in Wei et al.

Double Patenting

Claims 1-6 and 9-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of 6,451,748 is withdrawn in view of applicant's arguments.

With respect to claims 1-15 of U.S. Patent No. and 6,861,397, the examiner maintains the obviousness-type double patenting rejection.

Applicant's argues that the '397 patent recites the presence of about 0.1 to about 15% by weight of a surfactant.

The examiner contends that applicant's claims require 0 to 0.2% which is an overlap in proportions.

Applicant further argues that '397 patent does not teach or suggest an aromatic carboxylic acid or the claims are silent with respect to an antimicrobial agent.

The examiner contends that the topically active compound recited in claim 1 of the '397 patent refers to salicylic acid (col. 13, line 21), which is applicant's preferred aromatic antimicrobial agent.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Necholus Ogden
Primary Examiner
Art Unit 1751

No
1-19-06